

**Chapter 14**

**FLOOD DAMAGE PREVENTION**

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**Article 14-1**

**STATUTORY AUTHORIZATION, FINDINGS OF FACT, PURPOSE AND METHODS**

**Sections:**

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**Section 14-1-1       Statutory Authorization**

Pursuant to ARIZ. REV. STAT. § 48-3610, the Arizona State Legislature enabled the Town of Fountain Hills to adopt regulations in conformance with ARIZ. REV. STAT. § 48-3603 designed to promote the public health, safety and general welfare of its citizenry.  
(05-09, Amended, 09/15/2005)

**Section 14-1-2       Findings of Fact**

- A.     The flood hazard areas of the Town of Fountain Hills are subject to periodic inundation, which may result in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief and impairment of the tax base, all of which adversely affect the public health, safety and general welfare.
- B.     These flood losses are caused by the cumulative effect of obstructions in areas of special flood hazards, which increase flood heights and velocities and, when inadequately anchored, cause damage in other areas. Uses that are inadequately flood proofed, elevated or otherwise protected from flood damage, also contribute to the flood loss.

(05-09, Amended, 09/15/2005)

**Section 14-1-3       Statement of Purpose**

It is the purpose of this Chapter to promote the public health, safety and general welfare, and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

- A.     Protect human life and health.
- B.     Minimize expenditure of public money for costly flood control projects.
- C.     Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public.
- D.     Minimize prolonged business interruptions.
- E.     Minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in areas of special flood hazard.

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- F. Help maintain a stable tax base by providing for the sound use and development of areas of special flood hazard so as to minimize blight areas caused by flooding.
- G. Ensure that potential buyers are notified that property is in an area of special flood hazard.
- H. Ensure that those who occupy the areas of special flood hazard assume responsibility for their actions.
- I. Maintain eligibility for disaster relief.  
(05-09, Amended, 09/15/2005)

### **Section 14-1-4      Methods of Reducing Flood Loses**

In order to accomplish its purposes, this Chapter includes methods and provisions for:

- A. Restricting or prohibiting uses which are dangerous to health, safety and property due to water or erosion hazards, or which result in damaging increases in erosion or in flood heights or velocities.
- B. Requiring that uses vulnerable to floods, including facilities that serve such uses, be protected against flood damage at the time of initial construction.
- C. Controlling the alteration of natural floodplains, stream channels and natural protective barriers, which help accommodate or channel flood waters.
- D. Controlling filling, grading, dredging and other development that may increase flood damage.
- E. Preventing or regulating the construction of flood barriers that will unnaturally divert flood waters or which may increase flood hazards in other areas.  
(05-09, Added, 09/15/2005)

## Article 14-2

### DEFINITIONS

#### Sections:

#### 14-2-1 Definitions

#### Section 14-2-1 Definitions

Unless specifically defined below, words or phrases used in this Chapter shall be interpreted so as to give them the meaning they have in common usage and to give this Chapter its most reasonable application.

**ADWR.** The Arizona Department of Water Resources.

**Appeal.** A request for a review of the floodplain administrator's interpretation of any provision of this Chapter or a request for a variance.

**Area of Shallow Flooding.** A designated AO or AH zone on a community's Flood Insurance Rate Map (FIRM) with a one percent or greater annual chance of flooding to an average depth of one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

**Area of Special Flood Hazard.** The land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year. These areas are designated as Zone A, AO, AH and A1-30 on the FIRM and other areas determined by the criteria adopted by the director of ADWR.

**Base Flood.** Shall have the same meaning as "One-Hundred Year Flood" as defined in this Chapter.

**Basement.** Any area of the building having its floor sub-grade (below ground level) on all sides.

**Building.** A roofed and walled structure.

**Community.** Any state, area or political subdivision thereof, or any Indian tribe or authorized tribal organization, or authorized native organization, which has authority to adopt and enforce floodplain management regulations for the areas within its jurisdiction.

**Cumulative Substantial Damage.** The cumulative total of all repairs of substantial damage to a repetitive loss structure. Such repairs shall not cumulatively increase the market value of the structure more than 49 percent of the market value during the life of the structure. This term does not, however, include either:

- A. Any project for improvement of a structure to correct existing violations of state or local health, sanitary or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or
- B. Any repair of flood damage to historic structure, provided the repair will not preclude the structure's continued designation as a historic structure.

**Cumulative Substantial Improvement.** The cumulative total of (i) all improvements, modifications, or additions to existing buildings during the preceding 5 years and (ii) all reconstruction and repairs to damaged buildings during the preceding 5 years. When the improvements, modifications, additions, reconstruction or repairs equal or exceed the 50% substantial improvement threshold, the structure must be brought into compliance.

**Development.** Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials.

**Encroachment.** The advance or infringement of uses, plant growth, fill, excavation, buildings, permanent structures or development into a floodplain, which may impede or alter the flow capacity of a floodplain.

**Erosion.** The process of the gradual wearing away of landmasses. This peril is not, per se, covered under the Program.

**Existing Manufactured Home Park or Subdivision.** A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, construction of streets and either final site grading or the pouring of concrete slabs) is completed before the effective date of the floodplain management regulations adopted by the community.

**Expansion to an Existing Manufactured Home Park or Subdivision.** The preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets and either final site grading or the pouring of concrete pads).

**FEMA.** The Federal Emergency Management Agency.

**FIA.** The Flood Insurance Administration.

**Flood or Flooding.** A general and temporary condition of partial or complete inundation of normally dry land areas from: (1) the overflow of flood waters; (2) the unusual and rapid accumulation or runoff of surface waters from any source; and/or (3) the collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm or by an unanticipated force of nature, such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in this definition.

**Flood Boundary and Floodway Map (FBFM).** The official map on which FEMA or the Federal Insurance Administration (FIA) has delineated the areas of special flood hazards and the floodway.

**Flood Hazard Boundary Map (FHBM).** The official map on which FEMA or FIA has delineated the areas of flood hazards.

**Flood Insurance Rate Map (FIRM).** The official map on which FEMA or FIA has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.

**Flood Insurance Study.** The official report provided by FIA that includes flood profiles, FIRM, FBFM and the water surface elevation of the base flood.

**Floodplain or Flood-Prone Area.** Any land area susceptible to being inundated by water from any source.

**Floodplain Administrator.** The individual appointed to administer and enforce the floodplain management regulations.

**Floodplain Board.** The Town Council of the Town of Fountain Hills at such times as they are engaged in the enforcement of this Chapter.

**Floodplain Management.** The operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to emergency preparedness plans, flood control works and floodplain management regulations.

**Floodproofing.** Any combination of structural and non-structural additions, changes or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

**Flood-Related Erosion.** The collapse or subsidence of land along the shore of a lake or other body of water as a result of undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as a flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding.

**Floodway.** The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height. Also referred to as Regulatory Floodway.

**Floodway Fringe.** The area of the floodplain on either side of the Regulatory Floodway where encroachment may be permitted.

**Functionally Dependent Use.** A use that cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking or port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities.

**Governing Body.** The Town Council of the Town of Fountain Hills.

**Hardship.** As related to Article 14-6 of this Chapter, means the exceptional difficulty that would result from a failure to grant the requested variance. The governing body requires that the variance be exceptional, unusual and peculiar to the property involved. Mere economic or financial hardship alone is not exceptional. Inconvenience, aesthetic considerations, physical handicaps, personal preferences or the disapproval of one's neighbors likewise cannot, as a rule, qualify as an exceptional hardship. All of these problems can be resolved through other means without granting a variance, even if the alternative is more expensive, or requires the property owner to build elsewhere or put the parcel to a different use than originally intended.

**Highest Adjacent Grade.** The highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

**Historic Structure.** Any structure that is any of the following:

- A. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior (Secretary) as meeting the requirements for individual listing on the National Register.
- B. Certified or preliminarily determined by the Secretary as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district.
- C. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary.
- D. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
  - a. By an approved state program as determined by the Secretary; or
  - b. Directly by the Secretary in states without approved programs.

**Levee.** A man-made structure, usually an earthen embankment, designed and constructed in accordance with sound engineering practices to contain, control or divert the flow of water so as to provide protection from temporary flooding.

**Lowest Floor.** The lowest floor of the lowest enclosed area, including basement. An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this Chapter.

**Manufactured Home.** A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term Manufactured Home does not include a recreational vehicle.

**Manufactured Home Park or Subdivision.** A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for sale or rent.

**Market Value.** The amount determined by estimating the cost to replace the structure in new condition and adjusting that cost figure by the amount of depreciation that has accrued since the structure was constructed. The cost of replacement of the structure shall be based on a square foot cost factor determined by reference to a building cost estimating guide recognized by the building construction industry. The amount of depreciation shall be determined by taking into account the age and physical deterioration of the structure and functional obsolescence as approved by the floodplain administrator, but shall not include economic or other forms of external obsolescence. Use of replacement costs or accrued depreciation factors different from those contained in recognized building cost estimating guides may be considered only if such factors are included in a report prepared by an independent professional appraiser and supported by a written explanation of the differences.

**Mean Sea Level.** Means, for purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929 or North American Vertical Datum (NAVD) of 1988, to which base flood elevations shown on a community's FIRM are referenced.

**New Construction.** Structures for which the start of construction commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, “new construction” means structures for which the "start of construction" commenced on or after the effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to such structures.

**New Manufactured Home Park or Subdivision.** A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets and either final site grading or the pouring of concrete pads) is completed on or after the effective date of floodplain management regulations adopted by the community.

**Obstruction.** Includes, but is not limited to, any dam, wall, wharf, embankment, levee, dike, pile, abutment, protection, excavation, channelization, bridge, conduit, culvert, building, wire, fence, rock, gravel, refuse, fill, structure, vegetation or other material in, along, across or projecting into any watercourse which may alter, impede, retard or change the direction and/or velocity of the flow of water, or due to its location, its propensity to snare or collect debris carried by the flow of water or its likelihood of being carried downstream.

**One-Hundred Year Flood.** A flood having a one percent chance of being equaled or exceeded in any given year.

**Person.** An individual or his agent, a firm, a partnership, an association or corporation, or an agent of the aforementioned groups, or the state or its agencies or political subdivisions.

**Recreational Vehicle.** A vehicle that is:

- A. Built on a single chassis.
- B. 400 square feet or less when measured at the largest horizontal projection.
- C. Designed to be self-propelled or permanently towable by a light duty truck.
- D. Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel or seasonal use.

**Regulatory Flood Elevation.** An elevation one foot above the base flood elevation for a watercourse for which the base flood elevation has been determined and shall be determined by the criteria developed by the director of ADWR for all other watercourses.

**Regulatory Floodway.** The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

**Repetitive Loss Structure.** A structure covered by a contract for flood insurance issued pursuant to the NFIA that has incurred flood-related damage on two occasions during any 10-year period ending on the date of the event for which a second claim is made, in which the cost of repairing the flood damage, on average, equaled or exceeded 25 percent of the market value of the structure at the time of each such flood event. In addition to the current claim, the NFIP must have paid the previous qualifying claim.



**Sheet Flow Area.** Means Area of Shallow Flooding, as defined above.

**Special Flood Hazard Area.** An area having special flood or flood-related erosion hazards and shown on a FHBM or FIRM as Zone A, AO, A1-30, AE, A99 or AH.

**Start of Construction.** Includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement or other improvement was within 180 days of the permit date. For construction, the actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns or any work beyond the stage of excavation, or the placement of a manufactured home on a foundation. The Start of construction does not include land preparation, such as clearing, grading and filling, nor does it include the installation of streets and/or walkways, nor does it include excavation for a basement, footings, piers or foundations or the erection of temporary forms, nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

**Structure.** A walled and roofed building, including a gas or liquid storage tank, which is principally aboveground, as well as a manufactured home.

**Substantial Damage.** Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

**Substantial Improvement.** Any reconstruction, rehabilitation, addition or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the start of construction of the improvement. This term includes structures which have incurred substantial damage, regardless of the actual repair work performed. The term does not, however, include either:

- A. Any project for improvement of a structure to correct existing violations of state or local health, sanitary or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or
- B. Any alteration of a historic structure, provided that the alteration would not preclude the structure's continued designation as a historic structure.

**Variance.** A grant of relief from the requirements of this Chapter that permits construction in a manner that would otherwise be prohibited by this Chapter.

**Violation.** The failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications or other evidence of compliance required in this Chapter is presumed to be in violation until such time as that documentation is provided.

**Water Surface Elevation.** The height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929 or North American Vertical Datum (NAVD) of 1988 of floods of various magnitudes and frequencies in the floodplains of riverine areas.

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**Watercourse.** A lake, river, creek, stream, wash, arroyo, channel or other topographic feature on or over which waters flow at least periodically. Watercourse includes specifically designated areas in which substantial flood damage may occur.  
(05-09, Amended, 09/15/2005)

## **Article 14-3**

### **GENERAL PROVISIONS**

#### **Sections:**

- 14-3-1            Lands to Which This Chapter Applies**
- 14-3-2            Basis for Establishing the Areas of Special Flood Hazard**
- 14-3-3            Compliance**
- 14-3-4            Abrogation and Greater Restrictions**
- 14-3-5            Interpretation**
- 14-3-6            Disclaimer of Liability**
- 14-3-7            Statutory Exemptions**
- 14-3-8            Unlawful Acts**
- 14-3-9            Declaration of Public Nuisance**
- 14-3-10          Abatement of Violations**
- 14-3-11          Severability**

#### **Section 14-3-1      Lands to Which This Chapter Applies**

This chapter shall apply to all areas of special flood hazards within the corporate limits of the town.  
(05-09, Amended, 09/15/2005, Text did not change. Previous section title: Application of Chapter)

#### **Section 14-3-2      Basis for Establishing the Areas of Special Flood Hazard**

The area of special flood hazard identified by the FIA of FEMA in a scientific and engineering report entitled "The Flood Insurance Study for the County of Maricopa, Arizona and Incorporated Areas" with accompanying FIRMs and FBFM, dated July 19, 2001 and all subsequent amendments and/or revisions, are hereby adopted by reference and declared to be a part of this Chapter. The FIS is the minimum area of applicability of this Chapter and may be supplemented by studies for other areas which allow implementation of this Chapter and which are recommended to the floodplain board by the floodplain administrator. The floodplain board, within its area of jurisdiction, shall delineate (or may, by rule, require developers of land to delineate) for areas where development is ongoing or imminent, and thereafter as development becomes imminent, floodplains consistent with the criteria developed by FEMA and the director of water resources. The FIS, FIRMs and FBFM are on file at 16705 E. Avenue of the Fountains, Fountain Hills, AZ 85268 (Town Hall, Public Works Department, Engineering Division).

(05-09, Amended, 09/15/2005)

#### **Section 14-3-3      Compliance**

All development of land, construction of residential, commercial or industrial structures, or future development within delineated floodplain areas is subject to the terms of this Chapter and other applicable regulations.

(05-09, Amended, 09/15/2005)

#### **Section 14-3-4      Abrogation and Greater Restrictions**

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This Chapter is not intended to repeal, abrogate or impair any existing easements, covenants or deed restrictions. However, where this Chapter and an ordinance, easement, covenant or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.  
(05-09, Amended, 09/15/2005)

### **Section 14-3-5 Interpretation**

In the interpretation and application of this Chapter, all provisions shall be:

- A. Considered as minimum requirements;
- B. Liberally construed in favor of the governing body; and,
- C. Deemed neither to limit nor repeal any other powers granted under state statutes.  
(05-09, Amended, 09/15/2005, Text did not change in the amendment.)

### **Section 14-3-6 Disclaimer of Liability**

The degree of flood protection required by this Chapter is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on occasion. Flood heights may be increased by man-made or natural causes. This Chapter does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damage. This Chapter shall not create liability on the part of the Town of Fountain Hills, any officer or employee thereof, the State of Arizona, NFIA or FEMA, for any flood damages that result from reliance on this Chapter or any administrative decision lawfully made hereunder.  
(05-09, Amended, 09/15/2005)

### **Section 14-3-7 Statutory Exemptions**

In accordance with Ariz. Rev. Stat. § 48-3609(H), as amended, unless expressly provided, this and any regulations adopted pursuant to this article do not affect:

- A. Existing legal uses of property or the right to continuation of such legal use. However, if a legal nonconforming use of land or a building or structure is discontinued for twelve months, or destroyed to the extent of 50 percent of its value as determined by a competent appraiser, any further use shall comply with this Chapter and regulations of the Town of Fountain Hills.
- B. Reasonable repair or alteration of property for the purposes for which the property was legally used on August 3, 1984, or on the date that any regulation affecting such property takes effect, except that any alteration, addition or repair to a nonconforming building or structure which would result in increasing its flood damage potential by 50 percent or more shall be either floodproofed or elevated to or above the regulatory flood elevation.
- C. Reasonable repair of structures constructed with the written authorization required by Ariz. Rev. Stat. § 48-3613, as amended.

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- D. Facilities constructed or installed pursuant to a Certificate of Environmental Compatibility issued pursuant to Ariz. Rev. Stat. Title 40, Chapter 2, Article 6.2.

Before any authorized construction begins for the exceptions listed below, the responsible person must submit plans for the construction to the floodplain board for review and comment. In accordance with Ariz. Rev. Stat. § 48-3613, as amended, written authorization shall not be required, nor shall the floodplain board prohibit:

- A. The construction of bridges, culverts, dikes and other structures necessary to the construction of public highways, roads and streets intersecting or crossing a watercourse.
- B. The construction of storage dams for watering livestock or wildlife, structures on banks of a watercourse to prevent erosion of or damage to adjoining land if the structure will not divert, retard or obstruct the natural channel of the watercourse or dams for the conservation of floodwaters as permitted by Ariz. Rev. Stat. Title 45, Chapter 6.
- C. Construction of tailing dams and waste disposal areas for use in connection with mining and metallurgical operations. This paragraph does not exempt those sand and gravel operations that will divert, retard or obstruct the flow of waters in any watercourse from complying with and acquiring authorization from the floodplain board pursuant to regulations adopted by the floodplain board under this article.
- D. Other construction upon determination by the floodplain board that written authorization is unnecessary.
- E. Any flood control district, county, city, town or other political subdivision from exercising powers granted to it under Ariz. Rev. Stat., Title 48, Chapter 21, Article 1.
- F. The construction of streams, waterways, lakes and other auxiliary facilities in conjunction with development of public parks and recreation facilities by a public agency or political subdivision.
- G. The construction and erection of poles, towers, foundations, support structures, guy wires and other facilities related to power transmission as constructed by any utility whether a public service corporation or a political subdivision.

In addition to other penalties or remedies otherwise provided by law, this state, a political subdivision or a person who may be damaged or has been damaged as a result of the unauthorized diversion, retardation or obstruction of a watercourse has the right to commence, maintain and prosecute any appropriate action or pursue any remedy to enjoin, abate or otherwise prevent any person from violating or continuing to violate this section or regulations adopted pursuant to this Chapter. If a person is found to be in violation of this Section, the court shall require the violator to either comply with this Section if authorized by the floodplain board or remove the obstruction and restore the watercourse to its original state. The court may also award such monetary damages as are appropriate to the injured parties resulting from the violation including reasonable costs and attorney fees.

(05-09, Amended, 09/15/2005)

### **Section 14-3-8 Unlawful Acts**

- A. It is unlawful for a person to engage in any development or to divert, retard or obstruct the flow of waters in any watercourse if it creates a hazard to life or property without securing the written

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authorization of the floodplain board. Where the watercourse is a delineated floodplain, no development shall take place in the floodplain without written authorization of the floodplain board.

- B. No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this Chapter and other applicable regulations. Violation of the requirements (including violations of conditions and safeguards established in connection with conditions) shall constitute a class one misdemeanor. Nothing herein shall prevent the Town of Fountain Hills from taking such lawful action as is necessary to prevent or remedy any violation.

(05-09, Amended, 09/15/2005, Previous section title: Declaration of Public Nuisance)

### **Section 14-3-9 Declaration of Public Nuisance**

Every new structure, building, fill, excavation or development located or maintained within any area of special flood hazard after August 8, 1973, in violation of this Chapter is a public nuisance per se and may be abated, prevented or restrained by action of the Town of Fountain Hills.

(05-09, Amended, 09/15/2005, Previous section title: Abatement of Violations)

### **Section 14-3-10 Abatement of Violations**

Within 30 days of discovery of a violation of this Chapter, the floodplain administrator shall submit a report to the floodplain board which shall include all information available to the floodplain administrator which is pertinent to said violation. Within 30 days of receipt of this report, the floodplain board shall do one of the following:

- A. Take any necessary action to effect the abatement of such violation.
- B. Issue a variance to this Chapter in accordance with the provisions of Article 14-6 herein.
- C. Order the owner of the property upon which the violation exists to provide whatever additional information may be required for their determination. Such information must be provided to the floodplain administrator within 30 days of such order and he shall submit an amended report to the floodplain board within 20 days. At their next regularly scheduled public meeting, the floodplain board shall either order the abatement of said violation or they shall grant a variance in accordance with the provisions of Article 14-6 herein.
- D. Submit to the administrator of NFIA a declaration for denial of insurance, stating that the property is in violation of a cited state or local law, regulation or ordinance, pursuant to Section 1316 of the NFIA of 1968, as amended.

(05-09, Amended, 09/15/2005, Previous section title: Unlawful Acts)

### **Section 14-3-11 Severability**

This Chapter and the various parts thereof are hereby declared to be severable. Should any Section of this Chapter be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the Chapter as a whole, or any portion thereof other than the Section so declared to be unconstitutional or invalid.

(05-09, Added, 09/15/2005)

## **Article 14-4**

### **ADMINISTRATION**

#### **Sections:**

**14-4-1            Establishment of Development Permit**

**14-4-2            Designation of the Floodplain Administrator**

**14-4-3            Duties and Responsibilities of the Floodplain Administrator**

#### **Section 14-4-1        Establishment of Development Permit**

A Development Permit shall be obtained before construction or development begins, including placement of manufactured homes, within any area of special flood hazard established in Section 14-3-2. Application for a Development Permit shall be made on forms furnished by the floodplain administrator and may include, but not be limited to, plans in duplicate drawn to scale showing the nature, location, dimensions and elevation of the area in question, existing or proposed structures, fill, storage of materials, drainage facilities and the location of the foregoing. Specifically, the following information is required:

- A.      Proposed elevation in relation to mean sea level of the lowest floor (including basement) of all structures. In Zone AO, elevation of existing highest adjacent natural grade and proposed elevation of lowest floor of all structures.
- B.      Proposed elevation in relation to mean sea level to which any non-residential structure will be floodproofed.
- C.      Certification by a registered professional engineer or architect that the floodproofing methods for any nonresidential structure meet the floodproofing criteria in subsection 14-5-1(C)(3).
- D.      Require base flood elevation data for subdivision proposals or other development greater than 50 lots or 5 acres.
- E.      Description of the extent to which any watercourse will be altered or relocated as a result of proposed development.

(05-09, Amended, 09/15/2005)

#### **Section 14-4-2        Designation of the Floodplain Administrator**

The Town Manager or authorized designee is hereby appointed to administer, implement and enforce this Chapter by granting or denying development permits in accordance with its provisions.

(05-09, Amended, 09/15/2005, Previous section title: Duties and Responsibilities of the Floodplain Administrator)

#### **Section 14-4-3        Duties and Responsibilities of the Floodplain Administrator**

Duties of the Floodplain Administrator shall include, but not be limited to:

- A.      Review all development permits to determine that:

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1. The permit requirements of this Chapter have been satisfied.
  2. All other required state and federal permits have been obtained.
  3. The site is reasonably safe from flooding.
  4. The proposed development does not adversely affect the carrying capacity of areas where base flood elevations have been determined but a floodway has not been designated. For purposes of this Chapter, “adversely affects” means that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will increase the water surface elevation of the base flood more than one foot at any point.
- B. Use of Other Base Flood Data. When base flood elevation data has not been provided in accordance with Section 14-3-2, the Floodplain Administrator shall obtain, review and reasonably utilize any base flood elevation data available from a federal, state or other source, in order to administer Article 14-5. Any such information shall be consistent with the requirements of FEMA and the director of water resources and shall be submitted to the Floodplain Board for adoption.
- C. Obtain and maintain for public inspection and make available the following:
1. The certified regulatory flood elevation required in subsection 14-5-1(C)(1).
  2. The Zone AO certification required in subsection 14-5-1(C)(2).
  3. The floodproofing certification required in subsection 14-5-1(C)(3).
  4. The certified opening elevation required in subsection 14-5-1(C)(4)(b).
  5. Permit records for repair of flood-related damage to structures on a cumulative basis over the life of the structure.
- D. Whenever a watercourse is to be altered or relocated:
1. Notify adjacent communities and ADWR prior to such alteration or relocation of a watercourse, and submit evidence of such notification to FIA through appropriate notification means.
  2. Require that the flood carrying capacity of the altered or relocated portion of said watercourse be maintained.
- E. Advise the Flood Control District of Maricopa County and any adjunct jurisdiction having responsibility for floodplain management in writing and provide a copy of a development plan of all applications for floodplain use permits or variances to develop land in a floodplain or floodway within one mile of the corporate limits of the Town of Fountain Hills. Also, advise the district of Maricopa County in writing and provide a copy of any development plan of any major development proposed within a floodplain or floodway, which could affect floodplains, floodways or watercourses within the district's area of jurisdiction. Written notice and a copy of the plan of development shall be sent to the district no later than three (3) working days after having been received by the Town of Fountain Hills.



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- F. Make interpretations, where needed, as to the exact location of the boundaries of the areas of special flood hazards (e.g., where there appears to be a conflict between a mapped boundary and actual field conditions). The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in Article 14-6.
- G. Take actions on violations of this Chapter as required in Section 14-3-10 herein.
- H. Notify FEMA and ADWR of acquisition by means of annexation, incorporation or otherwise, of additional areas of jurisdiction.
- I. Within one hundred twenty (120) days after completion of construction of any flood control protective works which changes the rate of flow during the flood or the configuration of the floodplain upstream or downstream from or adjacent to the project, the person or agency responsible for installation of the project shall provide to the governing bodies of all jurisdictions affected by the project a new delineation of all floodplains affected by the project. The new delineation shall be done according to the criteria adopted by the director of ADWR.
- J. A community's base flood elevations may increase or decrease resulting from physical changes affecting flooding conditions. As soon as practicable, but not later than six months after the date such information becomes available, a community shall notify the Administrator (FEMA) of the changes by submitting technical or scientific data in accordance with this part. Such a submission is necessary so that upon confirmation of those physical changes affecting flooding conditions, risk premium rates and flood plain management requirements will be based upon current data. This is accomplished through the Letter of Map Revision process.

(05-09, Added, 09/15/2005)

**Article 14-5**

**PROVISIONS FOR FLOOD HAZARD REDUCTION**

**Sections:**

<b>14-5-1</b>	<b>Standards of Construction</b>
<b>14-5-2</b>	<b>Standards for Storage of Materials and Equipment</b>
<b>14-5-3</b>	<b>Standards for Utilities</b>
<b>14-5-4</b>	<b>Additional Standards for Development, Including Subdivisions</b>
<b>14-5-5</b>	<b>Standards for Manufactured Homes</b>
<b>14-5-6</b>	<b>Standards for Recreational Vehicles</b>
<b>14-5-7</b>	<b>Floodways</b>
<b>14-5-8</b>	<b>Flood Related Erosion-Prone Area</b>

**Section 14-5-1 Standards of Construction**

In all areas of special flood hazards, the following standards are required:

**A. Anchoring**

1. All new construction and substantial improvements shall be anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.
2. All manufactured homes shall meet the anchoring standards of subsection 14-5-5(B).

**B. Construction Materials and Methods**

1. All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.
2. All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.
3. All new construction, substantial improvement and other proposed new development shall be constructed with electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.
4. Require within Zones AH or AO adequate drainage paths around structures on slopes to guide floodwaters around and away from proposed structures.

**C. Elevation and Floodproofing**

1. New construction and substantial improvement of any structure shall have the lowest floor, including basement, elevated at or above the regulatory flood elevation. Nonresidential structures may meet the standards in subsection 14-5-1(C)(3). Upon the completion of the structure the elevation of the lowest floor including basement shall be

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certified by a registered professional engineer or surveyor and provided to the Floodplain Administrator.

2. New construction and substantial improvement of any structure in Zone AO shall have the lowest floor, including basement, higher than the highest adjacent grade and at least one foot higher than the depth number on the FIRM, or at least two feet if no depth number is specified on the FIRM. Nonresidential structures may meet the standards in subsection 14-5-1(C)(3). Upon completion of the structure a registered professional engineer shall certify to the Floodplain Administrator that the elevation of the structure meets this standard.
3. Non-residential construction shall either be elevated in conformance with subsection 14-5-1(C)(1) or (2) or together with attendant utility and sanitary facilities:
  - a. Be floodproofed so that below the regulatory flood level the structure is watertight with walls substantially impermeable to the passage of water.
  - b. Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.
  - c. Be certified by a registered professional engineer or architect that the standards of this subsection are satisfied. Such certifications shall be provided to the floodplain administrator.
4. All new construction and substantial improvements with fully enclosed areas below the lowest floor that are useable solely for parking of vehicles, building access or storage in an area other than a basement and which are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect to meet or exceed all of the following minimum criteria:
  - a. A minimum of two openings on different sides of each enclosed area that have a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.
  - b. The bottom of all openings shall be no higher than one foot above grade.
  - c. Openings may be equipped with screens, louvers, valves or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.
5. Manufactured homes shall meet the above applicable standards and also the standards in Section 14-5-5.

(05-09, Amended, 09/15/2005)

### **Section 14-5-2 Standards for Storage of Materials and Equipment**

- A. The storage or processing of materials that are, in time of flooding, buoyant, flammable, explosive or could be injurious to human, animal or plant life is prohibited.

- B. Storage of other material or equipment may be allowed if not subject to major damage by floods and if firmly anchored to prevent flotation.  
(05-09, Amended, 09/15/2005)

#### **Section 14-5-3 Standards for Utilities**

- A. All new or replacement water supply and sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the system and discharge from systems into flood waters.
- B. On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.
- C. Waste disposal systems shall not be installed wholly or partially in a regulatory floodway.  
(05-09, Amended, 09/15/2005)

#### **Section 14-5-4 Additional Standards for Development, Including Subdivisions**

- A. All new subdivision proposals and other proposed development (including proposals for manufactured home parks and subdivisions), greater than 50 lots or 5 acres, whichever is the lesser, shall
  - 1. Identify the area of the special flood hazard area and the elevation of the base flood.
  - 2. Identify on the final plans the elevation(s) of the proposed structure(s) and pads. If the site is filled above the base flood, the final lowest floor and grade elevations shall be certified by a registered professional engineer or surveyor and provided to the floodplain administrator.
- B. All subdivision proposals and other proposed development shall be consistent with the need to minimize flood damage.
- C. All subdivision proposals and other proposed development shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize flood damage.
- D. All subdivision proposals and other proposed development shall provide adequate drainage to reduce exposure to flood hazards.  
(05-09, Amended, 09/15/2005, Previous section title: Standards for Subdivisions)

#### **Section 14-5-5 Standards for Manufactured Homes**

All manufactured homes that are placed or substantially improved shall:

- A. Be elevated so that the bottom of the structural frame or the lowest point of any attached appliances, whichever is lower, is at or above the regulatory flood elevation.

- B. Be securely anchored to an adequately anchored foundation system to resist flotation, collapse or lateral movement. Methods of anchoring may include, but are not to be limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable state and local anchoring requirements for resisting wind forces.

(05-09, Amended, 09/15/2005)

#### **Section 14-5-6 Standards for Recreational Vehicles**

All recreational vehicles placed on site will either:

- A. Be on site for fewer than 180 consecutive days, and be fully licensed and ready for highway use. A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions; or
- B. Meet the permit requirements of Article 14-4 of this Chapter and the elevation and anchoring requirements for manufactured homes in Section 14-5-5 above.

(05-09, Amended, 09/15/2005, Previous section title: Floodways)

#### **Section 14-5-7 Floodways**

Within areas of special flood hazard designated as floodways, the following provisions apply:

- A. Encroachments, including fill, new construction, substantial improvements and other development shall be prohibited, unless certification by a registered professional engineer or architect is provided demonstrating that such encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.
- B. In addition to the certification requirements in this Section 14-5-7, all new construction and substantial improvements shall comply with all other applicable flood hazard reduction provisions of Article 14-5.

(05-09, Added, 09/15/2005)

#### **Section 14-5-8 Flood Related Erosion-Prone Area**

- A. The floodplain administrator shall require permits for proposed construction and other development within all flood-related erosion-prone areas as known to the community.
- B. Permit applications shall be reviewed to determine whether the proposed site alterations and improvements will be reasonably safe from flood-related erosion and will not cause flood-related erosion hazards or otherwise aggravate the existing hazard.
- C. If a proposed development is found to be in the path of flood-related erosion or would increase the erosion hazard, such improvements shall be relocated or adequate protective measures shall be taken to avoid aggravating the existing erosion hazard.
- D. Within Zone E on the FIRM, a setback is required for all new development from a lake, bay,

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riverfront or other body of water to create a safety buffer consisting of a natural vegetative or contour strip. This buffer shall be designated according to the flood-related erosion hazard and erosion rate, in relation to the anticipated “useful life” of structures and depending upon the geologic, hydrologic, topographic and climatic characteristics of the land. The buffer may be used for suitable open space purposes such as agricultural, forestry, outdoors recreation and wildlife habitat areas and for other activities using temporary and portable structures only.

(05-09, Added, 09/15/2005)

## Article 14-6

### VARIANCE PROCEDURE

#### Sections:

- 14-6-1**            **Nature of Variances**
- 14-6-2**            **Conditions for Variances**
- 14-6-3**            **Appeal Board**

#### **Section 14-6-1**        **Nature of Variances**

A variance may only be granted for a parcel of property with physical characteristics so unusual that complying with the requirements of this Chapter would create an exceptional hardship to the applicant or the surrounding property owners. The characteristics must be unique to the property and not be shared by adjacent parcels. The unique characteristic must pertain to the land itself, not to the structure, its inhabitants or the property owners.

(05-09, Amended, 09/15/2005, Previous section title: Appeal Board)

#### **Section 14-6-2**        **Conditions for Variances**

- A.        Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing the procedures of Articles 14-4 and 14-5 of this Chapter have been fully considered. As the lot size increases beyond one-half acre, the technical justification required for issuing the variance increases.
- B.        Variances may be issued for the repair, rehabilitation or restoration of structures listed in the National Register of Historic Places or the State Inventory of Historic Places, upon a determination that the proposed repair or rehabilitation will not preclude the structures continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
- C.        Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
- D.        Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- E.        Variances shall only be issued upon:
  - 1.        A showing of good and sufficient cause.
  - 2.        A determination that failure to grant the variance would result in exceptional hardship to the applicant.
  - 3.        A showing that the use cannot perform its intended purpose unless it is located or carried out in close proximity to water. This includes only facilities defined in this Chapter as a "Functionally Dependent Use".

4. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public or conflict with existing local laws or ordinances.

(05-09, Amended, 09/15/2005)

### **Section 14-6-3      Appeal Board**

- A. The Floodplain Board of the Town of Fountain Hills shall hear and decide appeals and requests for variances from the requirements of this Chapter.
- B. The Floodplain Board shall hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made by the Floodplain Administrator in the enforcement or administration of this Chapter.
- C. In passing upon such applications, the Floodplain Board shall consider all technical evaluations, all relevant factors, standards specified in other sections of this Chapter, and including:
  1. The danger that materials may be swept onto other lands to the injury of others.
  2. The danger of life and property due to flooding or erosion damage.
  3. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner.
  4. The importance of the services provided by the proposed facility to the community.
  5. The availability of alternative locations for the proposed use, which are not subject to flooding or erosion damage.
  6. The compatibility of the proposed use with existing and anticipated development.
  7. The relationship of the proposed use to the comprehensive plan and floodplain management program for that area.
  8. The safety of access to the property in time of flood for ordinary and emergency vehicles.
  9. The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters expected at the site.
  10. The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, water system and streets and bridges.
- D. Upon consideration of the factors set forth in subsection 14-6-2(C) and the purposes of this Chapter, the floodplain board may attach such conditions to the granting of variances as it deems necessary to further the purposes of this Chapter.
- E. Any applicant to whom a variance is granted shall be given written notice over the signature of a community official that:



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1. The issuance of a variance to construct a structure below the base flood level may result in increased premium rates for flood insurance.
  2. Such construction below the base flood level increases risks to life and property.
  3. The land upon which the variance is granted shall be ineligible for exchange of state land pursuant to the flood relocation and land exchange program provided for by state law. A copy of the notice shall be recorded in the office of the Maricopa County recorder and shall be recorded in a manner so that it appears in the chain of title of the affected parcel of land.
- F. The floodplain administrator shall maintain a record of all variance actions, including justification for their issuance and report such variances issued in its biennial report submitted to the FEMA.  
(05-09, Added, 09/15/2005)

**Article 14-7**

**UNIFORM DRAINAGE REGULATION**

**Sections:**

**14-7-1            Uniform Drainage Regulation**

**Section 14-7-1      Uniform Drainage Regulation**

That certain document entitled "Drainage Policies and Standards for Maricopa County, Arizona", sponsored and distributed by the Flood Control District of Maricopa County, is hereby adopted by the Town of Fountain Hills and made a part of this Chapter the same as though said regulations were specifically set forth in full herein; and at least three copies of said regulations shall be filed in the office of the town clerk and kept available for public use and inspection.

(09-02, Amended, 02/05/2009; 05-09, Amended, 09/15/2005, text did not change)